

**LEGISLATIVE SERVICES AGENCY
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FISCAL IMPACT STATEMENT

LS 7277

BILL NUMBER: HB 1646

NOTE PREPARED: Feb 21, 2009

BILL AMENDED: Feb 19, 2009

SUBJECT: Loan Brokers and Uniform Securities Act.

FIRST AUTHOR: Rep. Burton

FIRST SPONSOR:

BILL STATUS: CR Adopted - 1st House

FUNDS AFFECTED: X GENERAL
X DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: (Amended) This bill has the following provisions:

Compliance with S.A.F.E- The bill amends the statute to bring it into compliance with the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (S.A.F.E. Act).

Licensing of Loan Brokers- The bill provides that mortgage loan originators and principal managers must be licensed, rather than registered, by the Securities Commissioner (SECCOM).

Application Fee- The bill reduces the application fees for licensure as a loan broker, mortgage loan originator, or principal manager. The bill specifies that a unique identifier obtained by an individual from the Nationwide Mortgage Licensing System and Registry (NMLSR) may not be used for purposes other than those set forth in the S.A.F.E. Act.

Bond Requirements- The bill changes the amount of the bond that a loan broker licensee must maintain from \$50,000 to an amount equal to: (1) \$50,000; (2) \$100,000; or (3) \$150,000; depending on the total amount of residential mortgage loans originated by the licensee in the previous calendar year.

Background Checks on Loan Brokers, Originators- The bill requires: (1) licensed mortgage loan originators; (2) licensed principal managers; and (3) certain individuals associated with licensed loan brokers; to submit fingerprints to the SECCOM every three years for use in criminal history background checks. The bill requires an applicant for licensure as a mortgage loan originator or as a principal manager to authorize the SECCOM to obtain a consumer report concerning the applicant.

Consumer Report- The bill sets forth certain information from a consumer report that the SECCOM may consider in determining whether an applicant has demonstrated financial responsibility.

Written Examination for Applicants- The bill sets forth requirements for the written examination that each applicant for licensure as a mortgage loan originator or as a principal manager is required to take.

Annual License Renewal- The bill requires a licensee to renew the licensee's license annually, instead of biennially.

Denial, Suspension, Revocation- The bill requires, rather than allows, the SECCOM to deny, suspend, or revoke a license under certain circumstances.

Penalty Provision- The bill increases the criminal penalty for violation of the loan broker statute from a Class D to a Class C felony. The bill provides that a violation is a Class B felony if the person damaged by the violation is at least 60 years of age.

Report Requirements- The bill requires a loan broker licensee to maintain a report of all residential mortgage loans originated by the licensee, including pending loans and loans that were not closed.

Prohibited Acts- The bill prohibits a person, in connection with a contract for loan brokerage services, from violating certain federal laws and regulations concerning residential mortgage lending. The bill provides that an individual who acts solely as a loan processor or underwriter shall not represent to the public that the individual may or will perform mortgage loan origination activities.

Academic Instruction- The bill provides that the academic instruction that a person must complete to obtain or maintain a license must include specified hours of instruction in certain courses. The bill specifies that the written examination and academic instruction required for licensure as a mortgage loan originator or a principal manager must be approved by the NMLSR.

Reports of Condition- The bill requires each loan broker licensee to submit periodic reports of condition to: (1) the SECCOM; and (2) the NMLSR.

Uniform Securities Act- The bill amends the uniform securities act to provide that: (1) a registered broker-dealer office that is selected to complete a compliance report shall file its report not later than 45 days (instead of 90 days under current law) after being notified of its selection; (2) a person who knowingly violates the act while using or taking advantage of a relationship based on religious affiliation or worship commits a Class B felony; and (3) a person who commits a fraud in connection with the offer, sale, or purchase of a security commits a Class B felony if the person damaged by the fraud is at least 60 years of age.

Repealers- The bill repeals a provision exempting certain persons from the loan broker statute. The bill repeals the existing Indiana statute concerning the licensing of loan brokers, effective January 1, 2011.

Transfer of Responsibility- The bill transfers responsibility for the licensing and regulation of loan brokers, mortgage loan originators, and principal managers from the SECCOM to the Department of Financial Institutions (DFI), effective January 1, 2011. The bill requires the SECCOM and the Director of the Department (DODFI) to issue joint guidelines concerning any legislation recommended for introduction during the 2010 session of the General Assembly to facilitate the transfer. The bill requires the SECCOM

and the DODFI to submit the recommendations to: (1) the Legislative Council; and (2) the members of the legislative standing committees that have jurisdiction over legislation concerning financial institutions; not later than November 1, 2009.

Effective Date: (Amended) Upon passage; July 1, 2009; January 1, 2010; January 1, 2011.

Explanation of State Expenditures: *Summary* - State incarceration costs could increase by raising the penalty for violating laws concerning the licensure of loan brokers and establishing a new felony offense for violation of the Uniform Securities Act. Loan brokers would have to meet additional requirements, which could result in more felony violations. Additionally, there are provisions in the bill that could increase the costs of administering the licenses.

Other Administrative Costs: The bill requires periodic reports of condition and a three-year criminal history check. These costs, while passed on to the licensee, could increase costs for administering licensure.

(Revised) *Transfer of Responsibility-* The DFI would assume all licensing and regulation duties beginning January 1, 2011. The SECCOM and DODFI would cooperate in the transfer of these duties. The DFI would be allowed to use the Loan Broker Regulation Account (LBRA) for the regulation of loan brokers.

Background- Penalty Provision: State expenditures would increase if an offender is incarcerated in a state prison or if an offender is incarcerated for a longer period of time. A Class D felony is punishable by a prison term ranging between 6 months and 3 years or reduction to Class A misdemeanor, depending upon mitigating and aggravating circumstances. A Class C felony is punishable by a prison term ranging from 2 to 8 years, and a Class B felony is punishable by a prison term ranging from 6 to 20 years. The average expenditure to house an adult offender was \$20,287 in FY 2008. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the marginal cost for medical care, food, and clothing is approximately \$1,825 annually, or \$5 daily, per prisoner. The average length of stay in DOC facilities for all Class C felony offenders is approximately 2 years and for all Class B felony offenders is approximately 3.7 years.

Explanation of State Revenues: (Revised) *Application Fees:* A licensee would have to renew annually instead of biennially. In order to accommodate annual renewal, the licensing fee would be reduced by half. The proposed fee change would hold for the DFI, when assuming the duty of licensing loan brokers in 2011. All fees and funds accrued from licensing loan brokers by the DFI would be deposited into the LBRA. Unless licensees decided to exit from the business market after a year, the proposed change should not change total revenues received. However, the change to an annual renewal would affect the timing of receiving fees.

Table. Current Fees and Proposed Fees

<u>Licence Type - Fee</u>	<u>Current Fee</u>	<u>Proposed Fee</u>
Loan Broker - Application	\$400	\$200
- Ultimate Equitable Owner	\$200	\$100
Mortgage Loan Originator - Application	\$100	\$ 50
Principal Manager - Application	\$200	\$100

Removal of Exemptions- The bill removes exemptions from licensure for the following: attorneys while engaging in the practice of law; accountants while performing the practice of accountancy; broker-dealers, agents, or investment advisors otherwise registered; persons that procure, promise to procure, or assist in procuring a loan that is not subject to the Truth in Lending Act; community development corporations acting as subrecipient; and the Indiana Housing and Community Development Authority. If additional people are required to be licensed and are able to meet the standards, application fee revenue could increase.

Civil Penalty- The DFI would be able to assess a civil penalty on violators of the loan broker statute up to \$10,000 per violation.

Penalties: State revenues would be minimally affected as a result of the bill, since criminal fines and court fees are the same for Class D, C, and B felonies.

(Revised) *Background Checks on Loan Brokers, Originators-* Loan brokers, originators, office managers would submit fingerprints for a national criminal history check. Fees for the check would be paid by the licensee or new license applicant. If the fingerprints are collected by the Indiana State Police (ISP), then the fingerprinting is included in the \$32.35 fee. Of the fee amount, \$15 goes to the state General Fund.

Background on Application Fees: All fee revenues are to be placed in the Loan Broker Regulation Account of the state General Fund. The LBRA does not revert to the state General Fund at the end of the year, and all expenses incurred in administering licenses are paid by the fund. Business license revenues were \$195,760 in FY 2007 and \$252,490 in FY 2008. In FY 2007, expenses paid by the LBRA were \$131,219, and in 2008 expenses were \$225,462. The increase in revenue and expenses reflects the increase in license holders from 2007 legislation.

Explanation of Local Expenditures:

Explanation of Local Revenues: *Penalties:* No additional revenues would be expected since the court fees for all felony offenses are \$120.

(Revised) *Background Checks on Loan Brokers, Originators-* If a local law enforcement agency collected fingerprints from licensees and license applicants a local fee may be charged for the fingerprinting. If so, local units of government could receive additional revenue as a result of this proposal.

State Agencies Affected: DOC, DFI, Securities Commissioner.

Local Agencies Affected: Trial courts, local law enforcement agencies.

Information Sources: Indiana Sheriffs' Association; DOC.

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